

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0120-PST-E **TCEQ ID:** RN102827458 **CASE NO.:** 8982
RESPONDENT NAME: La Marque Independent School District

Page 1 of 3

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: La Marque Independent School District Transportation Department, 1610 Howell Avenue, La Marque, Galveston County

TYPE OF OPERATION: Transportation facility with non-retail fueling

SMALL BUSINESS: ☐ Yes ☒ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on June 18, 2007. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Elvia Maske, Enforcement Division, Enforcement Team 6 MC 128, (512) 239-0789; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468
Respondent: Mr. Ecomet Burley, Superintendent, La Marque Independent School District, P.O. Box 7, La Marque, Texas 77568
 Mr. Dwight Brannon, Executive Director of Human Resource Services and Operations, La Marque Independent School District, P.O. Box 7, La Marque, Texas 77568
 Mr. Fred Martinez, Regional V.P., Southwest Durham School Services, 9011 Mountain Ridge Drive, Suite 150, Austin, Texas 78759
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 25, 2006</p> <p>Date of NOE Relating to this Case: October 23, 2006 (NOE)</p> <p>Background Facts: This was a follow-up investigation. Docket No. 2003-0804-PST-E was issued to the Respondent on March 5, 2004 for failing to have financial assurance and the Respondent did not meet the requirements of the Order. An investigation was requested to determine compliance status of the Order. The investigation determined that the Respondent remained in non-compliance of the Order and also had other violations. Nine violations were documented.</p> <p>WASTE</p> <p>1) Failed to demonstrate the required financial responsibility [30 TEX. ADMIN. CODE § 37.815(a) and (b) and TCEQ Agreed Order Docket No. 2003-0804-PST-E, Ordering Provision No. 2].</p> <p>2) Failed to ensure the timely renewal of a previously issued underground storage tank ("UST") delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5) and TEX. WATER CODE § 26.346(a)].</p> <p>3) Failed to perform an automatic test for substance loss for each UST, in violation of 30 TEX. ADMIN. CODE § 34.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).</p> <p>4) Failed to monitor or test each pressurized line for releases [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].</p>	<p>Total Assessed: \$30,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$30,000</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: Absence of management practices designed to ensure compliance.</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>1) Immediately upon the effective date of this Agreed Order, cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ.</p> <p>2) Within 30 days after the effective date of this Agreed Order:</p> <p>a. Begin conducting effective manual or automatic inventory control procedures and release detection for all USTs;</p> <p>b. Conduct tests of the line leak detectors for performance and operational reliability;</p> <p>c. Equip the UST system at the facility with spill and overfill prevention equipment;</p> <p>d. Demonstrate Financial Responsibility;</p> <p>e. Bring all UST components into compliance with upgrade requirements by inspecting and testing the cathodic protection system for any UST which is required to be protected from corrosion and continue to inspect and test the cathodic protection system at least once every three years; and</p> <p>f. Begin inspecting the rectifier at least once every 60 days.</p> <p>3) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 1. and 2.a. through 2.f.</p>

<p>5) Failed to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>6) Failed to conduct daily and monthly inventory control [30 TEX. ADMIN. CODE § 34.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(a) and (c).</p> <p>7) Failed to have the cathodic protection system tested [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>8) Failed to inspect the rectifier [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)].</p> <p>9) Failed to provide proper overfill prevention equipment [30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].</p>		
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned PCW	30-Oct-2006	Screening	25-Jan-2007	EPA Due	
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RESPONDENT/FACILITY INFORMATION

Respondent	La Marque Independent School District		
Reg. Ent. Ref. No.	RN102827458		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	8982	No. of Violations	5	
Docket No.	2007-0120-PST-E	Order Type	Findings	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske	
Multi-Media		EC's Team	Order Compliance Team	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$24,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 25% Enhancement **Subtotals 2, 3, & 7** \$6,000

Notes Respondent has received one prior NOV for same or similar violations and one agreed order containing a denial of liability.

Culpability No 0% Enhancement **Subtotal 4** \$0

Notes Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction **Subtotal 5** \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$9,514 **0% Enhancement*** **Subtotal 6** \$0
Approx. Cost of Compliance \$5,550 **Capped at the Total EB \$ Amount*

SUM OF SUBTOTALS 1-7

Final Subtotal \$30,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$30,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$30,000

DEFERRAL

0%

Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY

\$30,000

Screening Date 25-Jan-2007

Docket No. 2007-0120-PST-E

PCW

Respondent La Marque Independent School District

Policy Revision 2 (September 2002)

Case ID No. 8982

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102827458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Respondent has received one prior NOV for same or similar violations and one agreed order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 25-Jan-2007

Docket No. 2007-0120-PST-E

PCW

Respondent La Marque Independent School District

Policy Revision 2 (September 2002)

Case ID No. 8982

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102827458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b) and TCEQ Agreed Order Docket No. 2003-0804-PST-E, Ordering Provision No. 2

Violation Description

Failed to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum Underground Storage Tanks (USTs).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 9

934 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$9,000

Nine annual events are recommended from the effective date (March 5, 2004) of Docket No. 2003-0804-PST-E to the investigation date of September 25, 2006. Three annual events for each of the three USTs.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8,190

Violation Final Penalty Total \$11,250

This violation Final Assessed Penalty (adjusted for limits) \$11,250

Economic Benefit Worksheet

Respondent La Marque Independent School District
Case ID No. 8982
Reg. Ent. Reference No. RN102827458
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	5-Mar-2004	1-Jul-2007	4.0	\$390	\$7,800	\$8,190
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$650 per tank). The date required is the date financial assurance was required by Docket No. 2003-0804-PST-E. The final date is the expected date of compliance.

Approx. Cost of Compliance \$1,950
TOTAL \$8,190

Screening Date 25-Jan-2007

Docket No. 2007-0120-PST-E

PCW

Respondent La Marque Independent School District

Policy Revision 2 (September 2002)

Case ID No. 8982

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102827458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5) and Tex. Water Code § 26.346(a)

Violation Description

Failed to ensure the timely renewal of a previously issued UST delivery certificate. Specifically, the prior certificate had expired on March 31, 2004 and had not been renewed.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

908 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$3,000

Three annual events are recommended from the UST registration expiration date of March 31, 2004, to the September 25, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$17

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent La Marque Independent School District

Case ID No. 8982

Reg. Ent. Reference No. RN102827458

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	1-Feb-2004	1-Jul-2007	3.4	\$17	n/a	\$17

Notes for DELAYED costs

Estimated cost to prepare and submit self-certification form for UST registration. Date required is 30 days prior to expiration of UST registration and final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$17

Screening Date 25-Jan-2007

Docket No. 2007-0120-PST-E

PCW

Respondent La Marque Independent School District

Policy Revision 2 (September 2002)

Case ID No. 8982

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102827458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), 334.50(b)(2), 334.50(b)(2)(A)(i)(III),
334.50(d)(1)(B)(ii) and Tex. Water Code § 26.3475(a) and 26.3475(c)(1)

Violation Description

Failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from the UST system. Specifically, at the time of the investigation there were no documents demonstrating that monitoring for releases was being conducted. Failed to monthly monitor or annually test each pressurized line for releases and failure to test the line leak detectors at least once per year for performance and operational reliability. Specifically, at the time of the investigation, there were not documents demonstrating that monitoring for releases was being conducted and the most recent line and leak detector tests were conducted on December 5, 2003.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to monitor USTs for releases can result in the exposure of a significant amount of contaminants which may exceed levels that are protective of human health and the environment.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

123 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two quarterly events are recommended from the date of the September 25, 2006 investigation to the date of screening, January 25, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$84

Violation Final Penalty Total \$6,250

This violation Final Assessed Penalty (adjusted for limits) \$6,250

Economic Benefit Worksheet

Respondent La Marque Independent School District
Case ID No. 8982
Reg. Ent. Reference No. RN102827458
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$500	25-Sep-2006	1-Jul-2007	0.8	\$1	\$25	\$27
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	25-Sep-2006	1-Jul-2007	0.8	\$57	n/a	\$57

Notes for DELAYED costs

Estimated cost to conduct monthly monitoring for the USTs and to conduct piping tightness and annual line leak detector tests. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$2,000	TOTAL	\$84
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Screening Date 25-Jan-2007

Docket No. 2007-0120-PST-E

PCW

Respondent La Marque Independent School District

Policy Revision 2 (September 2002)

Case ID No. 8982

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102827458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.49(c)(4), 334.49(c)(2)(C) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to have the cathodic protection system tested at least once every three years. Specifically, at the time of the investigation, no documentation existed that cathodic protection system tests had been conducted within the prior three years. Failure to inspect the rectifier at least once every 60 days for impressed current systems. Specifically, at the time of the investigation, no 60 day rectifier inspections were being conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants which may exceed levels that are protective of human health and environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

1096 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two quarterly events are recommended from the date of the September 25, 2006 investigation to the date of screening, January 25, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,196

Violation Final Penalty Total \$6,250

This violation Final Assessed Penalty (adjusted for limits) \$6,250

Economic Benefit Worksheet

Respondent La Marque Independent School District

Case ID No. 8982

Reg. Ent. Reference No. RN102827458

Media Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	25-Sep-2003	25-Sep-2006	3.9	\$196	\$1,000	\$1,196

Notes for AVOIDED costs

Avoided cost for completing the triennial test for three USTs. The Date required is three years before the Investigation date and the final date is the Investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,196

Screening Date 25-Jan-2007

Docket No. 2007-0120-PST-E

PCW

Respondent La Marque Independent School District

Policy Revision 2 (September 2002)

Case ID No. 8982

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102827458

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.51(b)(2)(C) and Tex. Water Code § 26.3475(c)(2)

Violation Description

Failed to provide proper overfill prevention equipment for each of the USTs. Specifically, during the investigation, confirmation that there was overfill prevention equipment was not evident.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

123 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended from the date of the September 25, 2006 investigation to the date of screening, January 25, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$27

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent La Marque Independent School District
Case ID No. 8982
Reg. Ent. Reference No. RN102827458
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$500	25-Sep-2006	1-Jul-2007	0.8	\$1	\$25	\$27
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to equip the USTs with proper overfill protection equipment. Date required is the date of the investigation and the final date is estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$27

Compliance History

Customer/Respondent/Owner-Operator:	CN600582746	La Marque Independent School District	Classification: AVERAGE	Rating: 7.34
Regulated Entity:	RN102827458	LARMARQUE ISD TRANSP DEPT	Classification: AVERAGE	Site Rating: 16.00
	PETROLEUM STORAGE TANK	REGISTRATION		21614
ID Number(s):				
Location:	1610 HOWELL AVE, LA MARQUE, TX, 77568		Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	January 31, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 29, 2002 to January 29, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Elvia Maske Phone: (512) 239-0789

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 03/05/2004 ADMINORDER 2003-0804-PST-E
- Classification: Major
- Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G]
- Rqmt Prov: 2003-0804-PST-E, OP 2 ORDER
- Description: Failure to demonstrate acceptable financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground petroleum storage tanks.
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 10/23/2006 | (514534) |
| 2 | 09/27/2002 | (145349) |
| 3 | 10/25/2002 | (146061) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 09/27/2002 (145349)
- Self Report? NO Classification: Major
- Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G]
- Rqmt Prov: ORDER 2003-0804-PST-E, OP 2
- Description: Failure to demonstrate acceptable financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground petroleum storage tanks.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LA MARQUE INDEPENDENT SCHOOL
DISTRICT
RN102827458**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0120-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding La Marque Independent School District ("La Marque") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and La Marque presented this agreement to the Commission.

La Marque understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, La Marque agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon La Marque.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. La Marque owns a transportation facility with non-retail fueling located at 1610 Howell Avenue in La Marque, Galveston County, Texas (the "Facility").

2. La Marque's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
4. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to ensure the timely renewal of a previously issued UST delivery certificate. Specifically, the prior certificate had expired on March 31, 2004 and had not been renewed.
5. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from the UST system. Specifically, at the time of the investigation there were no documents demonstrating that monitoring for releases was being conducted.
6. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to monthly monitor or annually test each pressurized line for releases. Specifically, at the time of the investigation, all evidence indicated that the most recent line leak tests were conducted on December 5, 2003.
7. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to test the line leak detectors at least once per year for performance and operational reliability.
8. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Specifically, at the time of the investigation, there were no records demonstrating that daily and monthly inventory control and reconciliation was being conducted.
9. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to have the cathodic protection system tested at least once every three years. Specifically, at the time of the investigation, no documentation existed that cathodic protection system tests had been conducted within the prior three years.
10. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to inspect the rectifier at least once every 60 days for impressed current systems. Specifically, at the time of the investigation, no 60 day rectifier inspections were being conducted.
11. During an investigation on September 25, 2006, TCEQ staff documented that La Marque failed to provide proper overfill prevention equipment for each of the USTs. Specifically, at the time of the investigation, confirmation that there was overfill prevention equipment was not evident.
12. La Marque received notice of the violations on October 28, 2006.

II. CONCLUSIONS OF LAW

1. La Marque is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, La Marque failed to demonstrate the required financial responsibility, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b) and TCEQ Agreed Order Docket No. 2003-0804-PST-E, Ordering Provision No. 2.
3. As evidenced by Findings of Fact No. 4, La Marque failed to ensure the timely renewal of a previously issued UST delivery certificate, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5) and TEX. WATER CODE § 26.346(a).
4. As evidenced by Findings of Fact No. 5, La Marque failed to perform an automatic test for substance loss for each UST, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
5. As evidenced by Findings of Fact No. 6, La Marque failed to monitor or test each pressurized line for releases, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a).
6. As evidenced by Findings of Fact No. 7, La Marque failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a).
7. As evidenced by Findings of Fact No. 8, La Marque failed to conduct daily and monthly inventory control, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(a) and (c).
8. As evidenced by Findings of Fact No. 9, La Marque failed to have the cathodic protection system tested, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d).
9. As evidenced by Findings of Fact No. 10, La Marque failed to inspect the rectifier, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d).
10. As evidenced by Findings of Fact No. 11, La Marque failed to provide proper overfill prevention equipment, in violation of 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2).
11. Pursuant to TEX. Water Code §7.051, the Commission has the authority to assess an administrative penalty against La Marque for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

12. An administrative penalty in the amount of Thirty Thousand Dollars (\$30,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. La Marque has paid the Thirty Thousand Dollar (\$30,000) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. La Marque is assessed an administrative penalty in the amount of Thirty Thousand Dollars (\$30,000) as set forth in Section II, Paragraph 12 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and La Marque's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: La Marque Independent School District, Docket No. 2007-0120-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Immediately upon the effective date of this Agreed Order, La Marque shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ, in accordance with 30 TEX. ADMIN. CODE § 334.8.
3. Within 30 days after the effective date of this Agreed Order, La Marque shall undertake the following technical requirements:
 - a. Begin conducting effective manual or automatic inventory control procedures and release detection for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - b. Conduct tests of the line leak detectors for performance and operational reliability, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - c. Equip the UST system at the facility with spill and overfill prevention equipment, in accordance with 30 TEX. ADMIN. CODE § 334.51(b);
 - d. Demonstrate Financial Responsibility, in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and (b);
 - e. Bring all UST components into compliance with upgrade requirements by inspecting and testing the cathodic protection system for any UST which is required to be protected from

corrosion and continue to inspect and test the cathodic protection system at least once every three years, in accordance with 30 TEX. ADMIN. CODE § 334.49(c)(4)(C); and

- f. Begin inspecting the rectifier at least once every 60 days, in accordance with 30 TEX. ADMIN. CODE § 334.49(c)(4) and 334.49(c)(2)(C).
4. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2. and 3.a. through 3.f. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Manager, Waste Section
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

5. The provisions of this Agreed Order shall apply to and be binding upon La Marque. La Marque is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
6. If La Marque fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, La Marque's failure to comply is not a violation of this Agreed Order. La Marque shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. La Marque shall notify the Executive Director within seven days after La Marque becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by La Marque shall be made in writing to the Executive Director. Extensions are not effective until La Marque receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to La Marque if the Executive Director determines that La Marque has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. This Agreed Order, issued by the Commission, shall not be admissible against La Marque in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
11. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
12. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

La Marque Independent School District
DOCKET NO. 2007-0120-FST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

8/9/2007
Date


I, the undersigned, have read and understand the attached Agreed Order in the matter of La Marque Independent School District. I am authorized to agree to the attached Agreed Order on behalf of La Marque Independent School District, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, La Marque Independent School District waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

7-25-07
Date

Dwight C. Brannon
Name (Printed or typed)
Authorized Representative of
La Marque Independent School District

Executive Director
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

